IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 13313 of 2006
Date of decision 6 .2.2007

M/s Jindal Marble Industries .. petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.Rajiv Godara, Advocate for the petitioner
Ms. Ritu Bahri, DAG Hy. for the respondents

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 3.7.2006 (Annexure P.4) passed by the Higher Level Screen Committee (for brevity ' the HLSC') upholding the decision of the Lower Level Screening Committee (for brevity ' the LLSC') dated 29.9.2003. The committee has decided to withdraw the eligibility certificate issued to the petitioner for the reason that it had closed down its business and accordingly an order to that effect was passed under Rule 28A(8) of the Haryana General Sales Tax Rules,1975 (for brevity 'the Rules').

Brief facts of the case are that the petitioner firm is registered with the Director of Industries and Commerce as a small scale industrial unit since 29.5.1997 for manufacture of marble tiles and marble products. It has started its production from 27.2.1997. The petitioner firm applied for the eligibility certificate under the Rules which was issued on 3.7.1997. Accordingly, the unit became eligible for exemption from payment of sales tax from 27.2.1997 to 26.2.2006 subject to the ceiling of Rs. 8,76,877/-. The afore-mentioned certificate was issued by the LLSC under Rule 28 A of the Rules. On the basis of the eligibility certificate issued to the petitioner firm,

exemption certificate dated 21.7.1991 was issued by DETC Sirsa. It is claimed that there was hardly any house or population in the area in the year 1997 when the unit was installed and on the basis of the address given the competent authority had issued the eligibility certificate (Annexure P.1).

It is further alleged that one Yadwinder Singh constructed his house in front of the petitioner unit a year after causing obstruction to the unit of the petitioner. Thereafter, he filed a criminal complaint under Section 133 Cr.P.C. in the Court of Sub Divisional Magistrate, Sirsa on 29.12.1998. On 1.2.1999, the Sub Divisional Magistrate passed an order on the basis of the statement made by the petitioner that he would close down unit I and II and had requested for three months time. A copy of the order dated 1.2.1999 passed by the Sub Divisional Magistrate Sirsa is appended with the written statement as Annexure R/3. Accordingly, the petitioner firm closed down the unit w.e.f. 1.5.1999. The petitioner firm on 3.5.1999 sent an application to the Sales Tax Assessing Authority, Sirsa to cancel its sales tax registration as it was not able to find out any alternative place for shifting the unit. It is claimed that the petitioner firm had utilised the benefit of exemption only to the tune of Rs. 1,25,000/- against sanctioned amount of exemption amounting to Rs. 8,76,877/-.

On 25.7.2003, a show cause notice was issued by the General Manager, District Industries Centre cum Member Secretary LLSC Sirsa (Annexure R II) to explain their position within ten days of the date of issue of notice and also to attend the meeting the LLSC fixed for 8.8.2003. In order to afford proper opportunity to the petitioner, the hearing was adjourned to 29.8.2003. One Shri Sat Pal Jindal (Prop.) appeared before the Committee and submitted that the unit was closed by virtue of order dated

1.2.1999 passed by the District Magistrate Sirsa under Section 133 Cr.P.C.. The LLSC did not accept the plea of the petitioner that the circumstances were beyond its control to run the unit and accordingly the Committee decided to withdraw the eligibility certificate under Rule 28A(8)(a)(ii) of the Rules. The petitioner firm filed an appeal before the HLSC challenging the order of the LLSC dated 29.8.2003. The appeal was dismissed by the HLSC in its 94th meeting held on 23.5.2006 (Annexure P.4).

We have heard the learned counsel for the parties and are of the view that this petition is liable to be dismissed. In order to appreciate the controversy it would be apposite to read Rule 28A (8)(a) of the Rules which is as under:

> " 28 A(8)(a). The eligibility certificate granted to an industry unit shall be liable to be withdrawn at any time during its currency by the appropriate Screening committee, in the following circumstances:
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> i) If it is discovered that it has been obtained by fraud, deceit, mis-representation, mis-statement or concealment of material facts.
>
> ii) Discontinuance of its business by the unit or closing down of its business for a continuous period exceeding six months except in case of strike or lock out which in the opinion of the committee concerned is beyond the control of the unit;
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> iii) Disposal or transfer by the unit of any of its fixed assets adversely affecting its manufacturing or production capacity.
>
> Provided that no order of withdrawal of the eligibility certificate shall be made without affording a

reasonable opportunity of being heard to the affected unit."

A perusal of Rule 28 A(8)(ii) shows that the eligibility certificate granted to an industrial unit is liable to be withdrawn at any time during its currency by the appropriate screening committee, inter-alia, on the ground that business of the unit has remained closed for a continuous period exceeding six months except in case of strike or lock out. In the present case the LLSC and HLSC have rightly come to the conclusion that the closure of the petitioner unit was not beyond its control because the petitioner firm has conceded in proceedings under Section 133 Cr.P.C. before the Sub Divisional Magistrate that the unit was to be closed down and it had sought three months time to do so. This is evident from the order dated 1.2.1999 passed by the Sub Divisional Magistrate, Sirsa which reads as under:

" Both the Counsels are present. The respondent has made a statement that he will close down the units I & II of M/s Jindal Marble Industries which is situated at Bhagat Singh colony, Barnala Road, Sirsa. For closing down the same he seeks three months time. The applicant has also made statement that he has no objection if his application is decided accordingly but he has stated that respondent should be bound for the same. So respondent is bounded that he shall close down the deputed industries within a period of three months otherwise applicant has the right to re-open the case again.

Order pronounced."

A perusal of the afore-mentioned order shows that the

petitioner firm has voluntarily made a statement before the Sub Divisional Magistrate expressing its desire to close down the unit within a period of three months. By no stretch of imagination, the case of the petitioner would fall in the exception carved out by Rule 28A(8)(a)(ii) of the Rules. According to the afore-mentioned proviso, the eligibility certificate granted to an industrial unit is liable to be withdrawn at any time during its currency by the Screening Committee if it discontinues its business or close down its business for a continuous period exceeding six months. The only exception carved is that in case of strike or lock out, if the committee finds that the unit has remained closed exceeding period of six months which were beyond the control of the industrial unit then the rigor of Rule 28 A(8)(a) is not to operate. In the instant case by making a statement voluntarily for closing down the unit within a period of three months before the Sub Divisional Magistrate, Sirsa, the petitioner unit would not be covered by the exception carved out by Rule 28(8)(a)(ii) of the Rules.

In view of the above, the writ petition merits rejection and the same is accordingly dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

6.2.2007
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